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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS**DOCKETED**

DEC 18 2003

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
COVISTA, INC. FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
FACILITIES-BASED AND RESOLD LOCAL
EXCHANGE TELECOMMUNICATIONS
SERVICE IN ARIZONA AND FOR
COMPETITIVE CLASSIFICATION OF ITS
SERVICES.

DOCKET NO. T-03490A-03-0477

66641

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING:

October 8, 2003

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Philip J. Dion III

APPEARANCES:

Mike Patten, ROSKA HEYMAN & DEWULF, PLC,
on behalf of Covista, Inc.

David Ronald, Staff Attorney, Legal Division, on behalf
of the Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On July 14, 2003, Covista, Inc. ("Covista" or "Applicant") filed with the Commission
an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive
facilities-based and resold local exchange telecommunications services statewide.

2. Covista is a New Jersey corporation, authorized to do business in Arizona. Covista is a
wholly owned subsidiary of Covista Communications, Inc, which is a New Jersey corporation.

3. On August 18, 2003, the Commission's Utilities Division Staff ("Staff") filed its Staff
Report, which recommended approval of the application and included a number of additional

1 recommendations.

2 4. On August 20, 2003, a Procedural Order was issued setting this matter for hearing on
3 October 8, 2003 and setting various procedural deadlines.

4 5. On January 7, 2003, a full public hearing in this matter was held as scheduled.
5 Applicant appeared telephonically and was represented by counsel. Staff appeared and was
6 represented by counsel. The hearing was conducted before a duly authorized Administrative Law
7 Judge. Evidence was presented and testimony was taken. At the conclusion of the hearing, the
8 Administrative Law Judge took the matter under advisement and informed the parties that a
9 Recommended Opinion and Order would be prepared for the Commissioners' consideration.

10 6. On September 18, 2003, Applicant docketed a Notice of Filing of Affidavits of
11 Publication that comply with Commission rules.

12 7. Applicant has the technical capability to provide the services that are proposed in its
13 application.

14 8. Applicant has the financial ability to provide the services that are proposed in its
15 application.

16 9. Currently there are several incumbent providers of local exchange and interexchange
17 services in the service territory requested by Applicant, and numerous other entities have been
18 authorized to provide competitive local and interexchange services in all or portions of that territory.

19 10. It is appropriate to classify all of Applicant's authorized services as competitive.

20 11. The Staff Report stated that Applicant has no market power and the reasonableness of
21 its rates would be evaluated in a market with numerous competitors.

22 12. According to the Staff Report, Covista submitted the unaudited financial statements of
23 its parent company, Covista Communications, Inc., for the nine months ending October 31, 2002.
24 These financial statements list assets of \$20.8 million, equity of \$6.6 million, and a net loss of \$7.8
25 million.

26 13. The Application states that Covista collects advances and deposits from its customers.

27 14. Staff recommends that Covista's application for a Certificate to provide competitive
28 facilities-based and resold local exchange telecommunications services be granted subject to the

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1 following conditions:

- 2 (a) that, unless it provides services solely through the use of its own facilities,
3 Applicant be ordered to procure an Interconnection Agreement, within 365
4 days of the effective date of the Order in this matter or 30 days prior to the
5 provision of service, whichever comes first, that must remain in effect until
6 further order of the Commission, before being allowed to offer local exchange
7 service;
- 8 (b) that Applicant be ordered to file with the Commission, within 365 days of the
9 effective date of the Order in this matter or 30 days prior to the provision of
10 service, whichever comes first, its plan to have its customers' telephone
11 numbers included in the incumbent's Directories and Directory Assistance
12 databases;
- 13 (c) that Applicant be ordered to pursue permanent number portability
14 arrangements with other LECs pursuant to Commission rules, federal laws and
15 federal rules;
- 16 (d) that Applicant be ordered to abide by and participate in the AUSF mechanism
17 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
18 00000E-95-0498);
- 19 (e) that Applicant be ordered to abide by the quality of service standards that were
20 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- 21 (f) that in areas where it is the sole provider of local exchange service facilities,
22 Applicant be ordered to provide customers with access to alternative providers
23 of service pursuant to the provisions of Commission rules, federal laws and
24 federal rules;
- 25 (g) that Applicant be ordered to certify, through the 911 service provider in the
26 area in which it intends to provide service, that all issues associated with the
27 provision of 911 service have been resolved with the emergency service
28 providers within 365 days of an Order in this matter or 30 days prior to the
provision of service, whichever comes first, which certification must remain in
effect until further Order of the Commission;
- (h) that Applicant be ordered to abide by all the Commission decisions and
policies regarding CLASS services;
- (i) that Applicant be ordered to provide 2-PIC equal access;
- (j) that Applicant be required to notify the Commission immediately upon
changes to its address or telephone number;
- (k) that Applicant be ordered to comply with all Commission rules, orders, and
other requirements relevant to the provision of intrastate telecommunications
service;
- (l) that Applicant be ordered to maintain its accounts and records as required by
the Commission;
- (m) that Applicant be ordered to file with the Commission all financial and other
reports that the Commission may require, and in a form and at such times as

the Commission may designate;

- (n) that Applicant be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (o) that Applicant be ordered to cooperate with Commission investigations including, but not limited to, customer complaints; and
- (p) Applicant be ordered to participate in and contribute to a universal service fund, as required by the Commission.

15. Staff further recommended that the Applicant be subject to the Commission's rules governing interconnection and unbundling and the 1996 Telecommunications Act and the rules promulgated thereunder. In the event that the Applicant provides essential services or facilities that potential competitors need in order to provide their services, the Applicant should be required to offer those facilities or services to these providers on non-discriminatory terms and conditions pursuant to federal laws, federal rules and state rules.

16. Staff further recommended that Covista's application for a CC&N to provide intrastate telecommunications services should be granted subject to the following conditions:

- (a) Covista be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;
- (b) In order to protect Covista's customers:
 - (1) Covista should be ordered to procure a performance bond equal to \$125,000. The minimum bond amount of \$125,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from Covista's customers. The bond amount should be increased in increments of \$62,500 whenever the total amount of the advances, deposits and prepayments is within \$12,500 of the bond amount;
 - (2) if Covista desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107;
 - (3) Covista should be required to notify each of its local exchange customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
 - (4) Covista should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission; and

- 1 (c) If any of the above timeframes are not met, that Covista's CC&N should
2 become null and void without further Order of the Commission and no
3 extensions for compliance should be granted.

4 17. In its Staff Report, Staff stated that based on information obtained from the Applicant,
5 it has determined that Covista's fair value rate base is zero, and is too small to be useful in setting
6 rates. Staff further stated that in general, rates for competitive services are not set according to rate of
7 return regulation, but are heavily influenced by the market. Staff recommended that the Commission
8 not set rates for Covista based on the fair value of its rate base.

9 18. The rates to be ultimately charged by Covista will be heavily influenced by the
10 market. Because of the nature of the competitive market and other factors, a fair value analysis is not
11 necessarily representative of the company's operations.

12 19. Staff stated that Covista lacks the market power to adversely affect the
13 telecommunications market by either restricting output or raising prices. Also, Staff has
14 recommended that Covista's services be classified as competitive and thus subject to the flexible
15 pricing authority allowed by the Commission's Competitive Telecommunications Services rules.
16 Staff believes that these two factors, lack of market power and the competitive marketplace for the
17 services Covista proposes to offer, support the conclusion that a fair value analysis is not necessarily
18 representative of the company's operations, and that the rates charged by Covista will be reasonable.

19 20. Staff's recommendations, as set forth herein, are reasonable.

20 21. Covista's fair value rate base is determined to be zero for purposes of this proceeding.

21 **CONCLUSIONS OF LAW**

22 1. Applicant is a public service corporation within the meaning of Article XV of the
23 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

24 2. The Commission has jurisdiction over Applicant and the subject matter of the
25 application.

26 3. Notice of the application was given in accordance with the law.

27 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
28 Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based and resold local exchange telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Covista's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Covista, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon Covista, Inc.'s timely compliance with the following three Ordering Paragraphs.

IT IS FURTHER ORDERED that Covista, Inc. shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that Covista, Inc. shall procure a performance bond equal to \$125,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service. The minimum bond amount of \$125,000 shall be increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the Applicant's customers. The bond amount shall be increased in increments of \$62,500. This increase shall occur

1 when the total amount of the advances, deposits, and prepayments is within \$12,500 of the bond
2 amount.



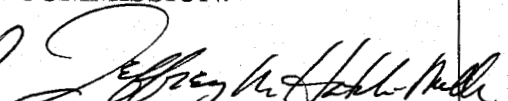
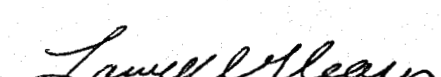

3 IT IS FURTHER ORDERED that Covista, Inc. shall comply with all of the Staff
4 recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

5 IT IS FURTHER ORDERED that if Covista, Inc. fails to meet the timeframes outlined in the
6 Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally granted
7 herein shall become null and void without further Order of the Commission.

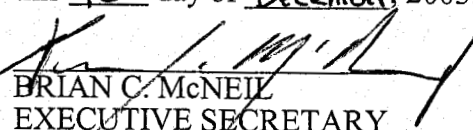
8 IT IS FURTHER ORDERED that if Covista, Inc. fails to notify each of its customers and the
9 Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C.
10 R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, Covista,
11 Inc.'s performance bond shall be forfeited.

12 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14 
15 CHAIRMAN  COMMISSIONER  COMMISSIONER
16 
17 COMMISSIONER  COMMISSIONER
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19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
20 Secretary of the Arizona Corporation Commission, have
21 hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this 18th day of December, 2003.

24 
25 BRIAN C. McNEIL
26 EXECUTIVE SECRETARY

27 DISSENT _____

28 DISSENT _____

PJD:mlj

1 SERVICE LIST FOR: COVISTA, INC.
2 DOCKET NO.: T-03490A-03-0477
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